

AMENDED IN SENATE MAY 30, 2012

AMENDED IN SENATE APRIL 25, 2012

SENATE BILL

No. 1425

Introduced by Senator Negrete McLeod

February 24, 2012

An act to amend ~~Sections 361.5 and~~ *Section* 388 of the Welfare and Institutions Code, relating to dependent children, *and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1425, as amended, Negrete McLeod. Juveniles: dependent children.

~~Existing law governs proceedings to declare a minor a dependent child of the court. Following a finding that a child is a dependent child of the court, existing law requires the court to order reunification services to the child and his or her parent or parents. Under existing law, a court is authorized to deny reunification services if it finds, by clear and convincing evidence, one of fifteen specified circumstances. Those circumstances include if the child has been adjudicated a dependent child because of severe sexual abuse or severe physical harm, as defined, to the child, a sibling, or half sibling by the parent or guardian, provided that the court finds that pursuing reunification services with that parent would not benefit the child.~~

~~This bill would instead authorize a court to deny reunification services in a dependency case if the child has been adjudicated a dependent child because of severe sexual abuse or severe physical harm to a child by a parent or guardian and if the court finds that pursuing reunification services with that parent would not benefit the child.~~

Existing law provides that after a child is declared a dependent child of the court, any parent or other person having an interest in the child, including the dependent child, may petition the court to change, modify, or set aside an order in the dependency proceedings or to terminate the court's jurisdiction. Existing law further permits any party, including the dependent child, to petition the court to terminate reunification services before the dependency review hearing. A court may terminate reunification services under this provision only after finding by a preponderance of the evidence that reasonable services have been offered and after finding by clear and convincing evidence either that a change in circumstances justifies termination of reunification services or that the parent's action or inaction makes reunification unlikely.

This bill would require a court to order a hearing on a ~~petition to modify an order finding that proposed modification of reunification services, custody, or visitation orders concerning a child for whom~~ reunification services were not ~~necessary or an order terminating parental rights only~~ ordered if the court finds, ~~by a preponderance of the evidence,~~ that the best interests of the child would be met by the proposed change. Additionally, this bill would require a court to modify ~~the~~ an order finding that reunification services were not necessary only if the court finds, by clear and convincing evidence, that the proposed change is in the child's best interests. The bill would apply the same standards to petitions to modify an order relating to custody or visitation of the dependent child.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Section 361.5 of the Welfare and Institutions~~
- 2 ~~Code, as amended by Section 1 of Chapter 59 of the Statutes of~~
- 3 ~~2011, is amended to read:~~
- 4 ~~361.5. (a) Except as provided in subdivision (b), or when the~~
- 5 ~~parent has voluntarily relinquished the child and the relinquishment~~
- 6 ~~has been filed with the State Department of Social Services, or~~
- 7 ~~upon the establishment of an order of guardianship pursuant to~~
- 8 ~~Section 360, whenever a child is removed from a parent's or~~
- 9 ~~guardian's custody, the juvenile court shall order the social worker~~

1 to provide child welfare services to the child and the child's mother
2 and statutorily presumed father or guardians. Upon a finding and
3 declaration of paternity by the juvenile court or proof of a prior
4 declaration of paternity by any court of competent jurisdiction, the
5 juvenile court may order services for the child and the biological
6 father, if the court determines that the services will benefit the
7 child.

8 (1) Family reunification services, when provided, shall be
9 provided as follows:

10 (A) Except as otherwise provided in subparagraph (C), for a
11 child who, on the date of initial removal from the physical custody
12 of his or her parent or guardian, was three years of age or older,
13 court-ordered services shall be provided beginning with the
14 dispositional hearing and ending 12 months after the date the child
15 entered foster care as defined in Section 361.49, unless the child
16 is returned to the home of the parent or guardian.

17 (B) For a child who, on the date of initial removal from the
18 physical custody of his or her parent or guardian, was under three
19 years of age, court-ordered services shall be provided for a period
20 of six months from the dispositional hearing as provided in
21 subdivision (e) of Section 366.21, but no longer than 12 months
22 from the date the child entered foster care as defined in Section
23 361.49 unless the child is returned to the home of the parent or
24 guardian.

25 (C) For the purpose of placing and maintaining a sibling group
26 together in a permanent home should reunification efforts fail, for
27 a child in a sibling group whose members were removed from
28 parental custody at the same time, and in which one member of
29 the sibling group was under three years of age on the date of initial
30 removal from the physical custody of his or her parent or guardian,
31 court-ordered services for some or all of the sibling group may be
32 limited as set forth in subparagraph (B). For the purposes of this
33 paragraph, "a sibling group" shall mean two or more children who
34 are related to each other as full or half siblings.

35 (2) Any motion to terminate court-ordered reunification services
36 prior to the hearing set pursuant to subdivision (f) of Section 366.21
37 for a child described by subparagraph (A) of paragraph (1), or
38 prior to the hearing set pursuant to subdivision (e) of Section
39 366.21 for a child described by subparagraph (B) or (C) of
40 paragraph (1), shall be made pursuant to the requirements set forth

1 in subdivision (c) of Section 388. A motion to terminate
2 court-ordered reunification services shall not be required at the
3 hearing set pursuant to subdivision (c) of Section 366.21 if the
4 court finds by clear and convincing evidence one of the following:

5 (A) That the child was removed initially under subdivision (g)
6 of Section 300 and the whereabouts of the parent are still unknown.

7 (B) That the parent has failed to contact and visit the child.

8 (C) That the parent has been convicted of a felony indicating
9 parental unfitness.

10 (3) Notwithstanding subparagraphs (A), (B), and (C) of
11 paragraph (1), court-ordered services may be extended up to a
12 maximum time period not to exceed 18 months after the date the
13 child was originally removed from physical custody of his or her
14 parent or guardian if it can be shown, at the hearing held pursuant
15 to subdivision (f) of Section 366.21, that the permanent plan for
16 the child is that he or she will be returned and safely maintained
17 in the home within the extended time period. The court shall extend
18 the time period only if it finds that there is a substantial probability
19 that the child will be returned to the physical custody of his or her
20 parent or guardian within the extended time period or that
21 reasonable services have not been provided to the parent or
22 guardian. In determining whether court-ordered services may be
23 extended, the court shall consider the special circumstances of an
24 incarcerated or institutionalized parent or parents, or parent or
25 parents court-ordered to a residential substance abuse treatment
26 program, including, but not limited to, barriers to the parent's or
27 guardian's access to services and ability to maintain contact with
28 his or her child. The court shall also consider, among other factors,
29 good faith efforts that the parent or guardian has made to maintain
30 contact with the child. If the court extends the time period, the
31 court shall specify the factual basis for its conclusion that there is
32 a substantial probability that the child will be returned to the
33 physical custody of his or her parent or guardian within the
34 extended time period. The court also shall make findings pursuant
35 to subdivision (a) of Section 366 and subdivision (c) of Section
36 358.1.

37 When counseling or other treatment services are ordered, the
38 parent or guardian shall be ordered to participate in those services;
39 unless the parent's or guardian's participation is deemed by the
40 court to be inappropriate or potentially detrimental to the child, or

1 ~~unless a parent or guardian is incarcerated and the corrections~~
2 ~~facility in which he or she is incarcerated does not provide access~~
3 ~~to the treatment services ordered by the court. Physical custody of~~
4 ~~the child by the parents or guardians during the applicable time~~
5 ~~period under subparagraph (A), (B), or (C) of paragraph (1) shall~~
6 ~~not serve to interrupt the running of the period. If at the end of the~~
7 ~~applicable time period, a child cannot be safely returned to the~~
8 ~~care and custody of a parent or guardian without court supervision;~~
9 ~~but the child clearly desires contact with the parent or guardian;~~
10 ~~the court shall take the child's desire into account in devising a~~
11 ~~permanency plan.~~

12 ~~In cases where the child was under three years of age on the date~~
13 ~~of the initial removal from the physical custody of his or her parent~~
14 ~~or guardian or is a member of a sibling group as described in~~
15 ~~subparagraph (C) of paragraph (1), the court shall inform the parent~~
16 ~~or guardian that the failure of the parent or guardian to participate~~
17 ~~regularly in any court-ordered treatment programs or to cooperate~~
18 ~~or avail himself or herself of services provided as part of the child~~
19 ~~welfare services case plan may result in a termination of efforts~~
20 ~~to reunify the family after six months. The court shall inform the~~
21 ~~parent or guardian of the factors used in subdivision (c) of Section~~
22 ~~366.21 to determine whether to limit services to six months for~~
23 ~~some or all members of a sibling group as described in~~
24 ~~subparagraph (C) of paragraph (1).~~

25 ~~(4) Notwithstanding paragraph (3), court-ordered services may~~
26 ~~be extended up to a maximum time period not to exceed 24 months~~
27 ~~after the date the child was originally removed from physical~~
28 ~~custody of his or her parent or guardian if it is shown, at the hearing~~
29 ~~held pursuant to subdivision (b) of Section 366.22, that the~~
30 ~~permanent plan for the child is that he or she will be returned and~~
31 ~~safely maintained in the home within the extended time period.~~
32 ~~The court shall extend the time period only if it finds that it is in~~
33 ~~the child's best interest to have the time period extended and that~~
34 ~~there is a substantial probability that the child will be returned to~~
35 ~~the physical custody of his or her parent or guardian who is~~
36 ~~described in subdivision (b) of Section 366.22 within the extended~~
37 ~~time period, or that reasonable services have not been provided to~~
38 ~~the parent or guardian. If the court extends the time period, the~~
39 ~~court shall specify the factual basis for its conclusion that there is~~
40 ~~a substantial probability that the child will be returned to the~~

1 physical custody of his or her parent or guardian within the
2 extended time period. The court also shall make findings pursuant
3 to subdivision (a) of Section 366 and subdivision (c) of Section
4 358.1.

5 When counseling or other treatment services are ordered, the
6 parent or guardian shall be ordered to participate in those services,
7 in order for substantial probability to be found. Physical custody
8 of the child by the parents or guardians during the applicable time
9 period under subparagraph (A), (B), or (C) of paragraph (1) shall
10 not serve to interrupt the running of the period. If at the end of the
11 applicable time period, the child cannot be safely returned to the
12 care and custody of a parent or guardian without court supervision,
13 but the child clearly desires contact with the parent or guardian,
14 the court shall take the child's desire into account in devising a
15 permanency plan.

16 Except in cases where, pursuant to subdivision (b), the court
17 does not order reunification services, the court shall inform the
18 parent or parents of Section 366.26 and shall specify that the
19 parent's or parents' parental rights may be terminated.

20 (b) Reunification services need not be provided to a parent or
21 guardian described in this subdivision when the court finds, by
22 clear and convincing evidence, any of the following:

23 (1) That the whereabouts of the parent or guardian is unknown.
24 A finding pursuant to this paragraph shall be supported by an
25 affidavit or by proof that a reasonably diligent search has failed
26 to locate the parent or guardian. The posting or publication of
27 notices is not required in that search.

28 (2) That the parent or guardian is suffering from a mental
29 disability that is described in Chapter 2 (commencing with Section
30 7820) of Part 4 of Division 12 of the Family Code and that renders
31 him or her incapable of utilizing those services.

32 (3) That the child or a sibling of the child has been previously
33 adjudicated a dependent pursuant to any subdivision of Section
34 300 as a result of physical or sexual abuse, that following that
35 adjudication the child had been removed from the custody of his
36 or her parent or guardian pursuant to Section 361, that the child
37 has been returned to the custody of the parent or guardian from
38 whom the child had been taken originally, and that the child is
39 being removed pursuant to Section 361, due to additional physical
40 or sexual abuse.

1 ~~(4) That the parent or guardian of the child has caused the death~~
2 ~~of another child through abuse or neglect.~~

3 ~~(5) That the child was brought within the jurisdiction of the~~
4 ~~court under subdivision (e) of Section 300 because of the conduct~~
5 ~~of that parent or guardian.~~

6 ~~(6) That the child has been adjudicated a dependent pursuant~~
7 ~~to any subdivision of Section 300 as a result of severe sexual abuse~~
8 ~~or the infliction of severe physical harm to a child by a parent or~~
9 ~~guardian as defined in this subdivision, and the court makes a~~
10 ~~factual finding that it would not benefit the child to pursue~~
11 ~~reunification services with the offending parent or guardian.~~

12 ~~A finding of severe sexual abuse, for the purposes of this~~
13 ~~subdivision, may be based on, but is not limited to, sexual~~
14 ~~intercourse, or stimulation involving genital-genital, oral-genital,~~
15 ~~anal-genital, or oral-anal contact, whether between the parent or~~
16 ~~guardian and a child, or between a child and another person or~~
17 ~~animal with the actual or implied consent of the parent or guardian;~~
18 ~~or the penetration or manipulation of a child's genital organs or~~
19 ~~rectum by any animate or inanimate object for the sexual~~
20 ~~gratification of the parent or guardian, or for the sexual gratification~~
21 ~~of another person with the actual or implied consent of the parent~~
22 ~~or guardian.~~

23 ~~A finding of the infliction of severe physical harm, for the~~
24 ~~purposes of this subdivision, may be based on, but is not limited~~
25 ~~to, deliberate and serious injury inflicted to or on a child's body~~
26 ~~by an act or omission of the parent or guardian, or of another~~
27 ~~individual or animal with the consent of the parent or guardian;~~
28 ~~deliberate and torturous confinement of a child in a closed space;~~
29 ~~or any other torturous act or omission that would be reasonably~~
30 ~~understood to cause serious emotional damage.~~

31 ~~(7) That the parent is not receiving reunification services for a~~
32 ~~sibling or a half sibling of the child pursuant to paragraph (3), (5),~~
33 ~~or (6).~~

34 ~~(8) That the child was conceived by means of the commission~~
35 ~~of an offense listed in Section 288 or 288.5 of the Penal Code, or~~
36 ~~by an act committed outside of this state that, if committed in this~~
37 ~~state, would constitute one of those offenses. This paragraph only~~
38 ~~applies to the parent who committed the offense or act.~~

39 ~~(9) That the child has been found to be a child described in~~
40 ~~subdivision (g) of Section 300; that the parent or guardian of the~~

1 child willfully abandoned the child, and the court finds that the
2 abandonment itself constituted a serious danger to the child; or
3 that the parent or other person having custody of the child
4 voluntarily surrendered physical custody of the child pursuant to
5 Section 1255.7 of the Health and Safety Code. For the purposes
6 of this paragraph, “serious danger” means that without the
7 intervention of another person or agency, the child would have
8 sustained severe or permanent disability, injury, illness, or death.
9 For purposes of this paragraph, “willful abandonment” shall not
10 be construed as actions taken in good faith by the parent without
11 the intent of placing the child in serious danger.

12 (10) That the court ordered termination of reunification services
13 for any siblings or half siblings of the child because the parent or
14 guardian failed to reunify with the sibling or half sibling after the
15 sibling or half sibling had been removed from that parent or
16 guardian pursuant to Section 361 and that parent or guardian is
17 the same parent or guardian described in subdivision (a) and that,
18 according to the findings of the court, this parent or guardian has
19 not subsequently made a reasonable effort to treat the problems
20 that led to removal of the sibling or half sibling of that child from
21 that parent or guardian.

22 (11) That the parental rights of a parent over any sibling or half
23 sibling of the child had been permanently severed, and this parent
24 is the same parent described in subdivision (a), and that, according
25 to the findings of the court, this parent has not subsequently made
26 a reasonable effort to treat the problems that led to removal of the
27 sibling or half sibling of that child from the parent.

28 (12) That the parent or guardian of the child has been convicted
29 of a violent felony, as defined in subdivision (c) of Section 667.5
30 of the Penal Code.

31 (13) That the parent or guardian of the child has a history of
32 extensive, abusive, and chronic use of drugs or alcohol and has
33 resisted prior court-ordered treatment for this problem during a
34 three-year period immediately prior to the filing of the petition
35 that brought that child to the court’s attention, or has failed or
36 refused to comply with a program of drug or alcohol treatment
37 described in the case plan required by Section 358.1 on at least
38 two prior occasions, even though the programs identified were
39 available and accessible.

1 ~~(14) That the parent or guardian of the child has advised the~~
2 ~~court that he or she is not interested in receiving family~~
3 ~~maintenance or family reunification services or having the child~~
4 ~~returned to or placed in his or her custody and does not wish to~~
5 ~~receive family maintenance or reunification services.~~

6 ~~The parent or guardian shall be represented by counsel and shall~~
7 ~~execute a waiver of services form to be adopted by the Judicial~~
8 ~~Council. The court shall advise the parent or guardian of any right~~
9 ~~to services and of the possible consequences of a waiver of~~
10 ~~services, including the termination of parental rights and placement~~
11 ~~of the child for adoption. The court shall not accept the waiver of~~
12 ~~services unless it states on the record its finding that the parent or~~
13 ~~guardian has knowingly and intelligently waived the right to~~
14 ~~services.~~

15 ~~(15) That the parent or guardian has on one or more occasions~~
16 ~~willfully abducted the child or child's sibling or half sibling from~~
17 ~~his or her placement and refused to disclose the child's or child's~~
18 ~~sibling's or half sibling's whereabouts, refused to return physical~~
19 ~~custody of the child or child's sibling or half sibling to his or her~~
20 ~~placement, or refused to return physical custody of the child or~~
21 ~~child's sibling or half sibling to the social worker.~~

22 ~~(e) In deciding whether to order reunification in any case in~~
23 ~~which this section applies, the court shall hold a dispositional~~
24 ~~hearing. The social worker shall prepare a report that discusses~~
25 ~~whether reunification services shall be provided. When it is alleged,~~
26 ~~pursuant to paragraph (2) of subdivision (b), that the parent is~~
27 ~~incapable of utilizing services due to mental disability, the court~~
28 ~~shall order reunification services unless competent evidence from~~
29 ~~mental health professionals establishes that, even with the provision~~
30 ~~of services, the parent is unlikely to be capable of adequately caring~~
31 ~~for the child within the time limits specified in subdivision (a).~~

32 ~~The court shall not order reunification for a parent or guardian~~
33 ~~described in paragraph (3), (4), (6), (7), (8), (9), (10), (11), (12),~~
34 ~~(13), (14), or (15) of subdivision (b) unless the court finds, by clear~~
35 ~~and convincing evidence, that reunification is in the best interest~~
36 ~~of the child.~~

37 ~~In addition, the court shall not order reunification in any situation~~
38 ~~described in paragraph (5) of subdivision (b) unless it finds that,~~
39 ~~based on competent testimony, those services are likely to prevent~~
40 ~~reabuse or continued neglect of the child or that failure to try~~

1 reunification will be detrimental to the child because the child is
2 closely and positively attached to that parent. The social worker
3 shall investigate the circumstances leading to the removal of the
4 child and advise the court whether there are circumstances that
5 indicate that reunification is likely to be successful or unsuccessful
6 and whether failure to order reunification is likely to be detrimental
7 to the child.

8 The failure of the parent to respond to previous services, the fact
9 that the child was abused while the parent was under the influence
10 of drugs or alcohol, a past history of violent behavior, or testimony
11 by a competent professional that the parent's behavior is unlikely
12 to be changed by services are among the factors indicating that
13 reunification services are unlikely to be successful. The fact that
14 a parent or guardian is no longer living with an individual who
15 severely abused the child may be considered in deciding that
16 reunification services are likely to be successful, provided that the
17 court shall consider any pattern of behavior on the part of the parent
18 that has exposed the child to repeated abuse.

19 (d) If reunification services are not ordered pursuant to
20 paragraph (1) of subdivision (b) and the whereabouts of a parent
21 become known within six months of the out-of-home placement
22 of the child, the court shall order the social worker to provide
23 family reunification services in accordance with this subdivision.

24 (e) (1) If the parent or guardian is incarcerated or
25 institutionalized, the court shall order reasonable services unless
26 the court determines, by clear and convincing evidence, those
27 services would be detrimental to the child. In determining
28 detriment, the court shall consider the age of the child, the degree
29 of parent-child bonding, the length of the sentence, the length and
30 nature of the treatment, the nature of the crime or illness, the degree
31 of detriment to the child if services are not offered and, for children
32 10 years of age or older, the child's attitude toward the
33 implementation of family reunification services, the likelihood of
34 the parent's discharge from incarceration or institutionalization
35 within the reunification time limitations described in subdivision
36 (a), and any other appropriate factors. In determining the content
37 of reasonable services, the court shall consider the particular
38 barriers to an incarcerated or otherwise institutionalized parent's
39 access to those court-mandated services and ability to maintain
40 contact with his or her child, and shall document this information

1 in the child's case plan. Reunification services are subject to the
2 applicable time limitations imposed in subdivision (a). Services
3 may include, but shall not be limited to, all of the following:

4 (A) Maintaining contact between the parent and child through
5 collect telephone calls.

6 (B) Transportation services, where appropriate.

7 (C) Visitation services, where appropriate.

8 (D) Reasonable services to extended family members or foster
9 parents providing care for the child if the services are not
10 detrimental to the child.

11 An incarcerated parent may be required to attend counseling,
12 parenting classes, or vocational training programs as part of the
13 reunification service plan if actual access to these services is
14 provided. The social worker shall document in the child's case
15 plan the particular barriers to an incarcerated or institutionalized
16 parent's access to those court-mandated services and ability to
17 maintain contact with his or her child.

18 (2) The presiding judge of the juvenile court of each county
19 may convene representatives of the county welfare department,
20 the sheriff's department, and other appropriate entities for the
21 purpose of developing and entering into protocols for ensuring the
22 notification, transportation, and presence of an incarcerated or
23 institutionalized parent at all court hearings involving proceedings
24 affecting the child pursuant to Section 2625 of the Penal Code.
25 The county welfare department shall utilize the prisoner locator
26 system developed by the Department of Corrections and
27 Rehabilitation to facilitate timely and effective notice of hearings
28 for incarcerated parents.

29 (3) Notwithstanding any other provision of law, if the
30 incarcerated parent is a woman seeking to participate in the
31 community treatment program operated by the Department of
32 Corrections and Rehabilitation pursuant to Chapter 4.8
33 (commencing with Section 1174) of Title 7 of Part 2 of, Chapter
34 4 (commencing with Section 3410) of Title 2 of Part 3 of, the Penal
35 Code, the court shall determine whether the parent's participation
36 in a program is in the child's best interest and whether it is suitable
37 to meet the needs of the parent and child.

38 (f) If the court, pursuant to paragraph (2), (3), (4), (5), (6), (7),
39 (8), (9), (10), (11), (12), (13), (14), or (15) of subdivision (b) or
40 paragraph (1) of subdivision (c), does not order reunification

1 services, it shall, at the dispositional hearing, that shall include a
2 permanency hearing, determine if a hearing under Section 366.26
3 shall be set in order to determine whether adoption, guardianship,
4 or long-term foster care, or in the case of an Indian child, in
5 consultation with the child's tribe, tribal customary adoption, is
6 the most appropriate plan for the child, and shall consider in-state
7 and out-of-state placement options. If the court so determines, it
8 shall conduct the hearing pursuant to Section 366.26 within 120
9 days after the dispositional hearing. However, the court shall not
10 schedule a hearing so long as the other parent is being provided
11 reunification services pursuant to subdivision (a). The court may
12 continue to permit the parent to visit the child unless it finds that
13 visitation would be detrimental to the child.

14 (g) (1) Whenever a court orders that a hearing shall be held
15 pursuant to Section 366.26, including, when, in consultation with
16 the child's tribe, tribal customary adoption is recommended, it
17 shall direct the agency supervising the child and the licensed county
18 adoption agency, or the State Department of Social Services when
19 it is acting as an adoption agency in counties that are not served
20 by a county adoption agency, to prepare an assessment that shall
21 include:

22 (A) Current search efforts for an absent parent or parents and
23 notification of a noncustodial parent in the manner provided for
24 in Section 291.

25 (B) A review of the amount of and nature of any contact between
26 the child and his or her parents and other members of his or her
27 extended family since the time of placement. Although the
28 extended family of each child shall be reviewed on a case-by-case
29 basis, "extended family" for the purpose of this subparagraph shall
30 include, but not be limited to, the child's siblings, grandparents,
31 aunts, and uncles.

32 (C) An evaluation of the child's medical, developmental,
33 scholastic, mental, and emotional status.

34 (D) A preliminary assessment of the eligibility and commitment
35 of any identified prospective adoptive parent or guardian, including
36 a prospective tribal customary adoptive parent, particularly the
37 caretaker, to include a social history, including screening for
38 criminal records and prior referrals for child abuse or neglect, the
39 capability to meet the child's needs, and the understanding of the
40 legal and financial rights and responsibilities of adoption and

guardianship. If a proposed guardian is a relative of the minor, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3 and in Section 361.4. As used in this subparagraph, “relative” means an adult who is related to the minor by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words “great,” “great-great,” or “grand,” or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

(E) The relationship of the child to any identified prospective adoptive parent or guardian, including a prospective tribal customary parent, the duration and character of the relationship, the degree of attachment of the child to the prospective relative guardian or adoptive parent, the relative’s or adoptive parent’s strong commitment to caring permanently for the child, the motivation for seeking adoption or guardianship, a statement from the child concerning placement and the adoption or guardianship, and whether the child over 12 years of age has been consulted about the proposed relative guardianship arrangements, unless the child’s age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

(F) An analysis of the likelihood that the child will be adopted if parental rights are terminated.

(G) In the case of an Indian child, in addition to subparagraphs (A) to (F), inclusive, an assessment of the likelihood that the child will be adopted, when, in consultation with the child’s tribe, a customary tribal adoption, as defined in Section 366.24, is recommended. If tribal customary adoption is recommended, the assessment shall include an analysis of both of the following:

(i) Whether tribal customary adoption would or would not be detrimental to the Indian child and the reasons for reaching that conclusion.

(ii) Whether the Indian child cannot or should not be returned to the home of the Indian parent or Indian custodian and the reasons for reaching that conclusion.

(2) (A) A relative caregiver’s preference for legal guardianship over adoption, if it is due to circumstances that do not include an unwillingness to accept legal or financial responsibility for the

1 child, shall not constitute the sole basis for recommending removal
2 of the child from the relative caregiver for purposes of adoptive
3 placement.

4 (B) A relative caregiver shall be given information regarding
5 the permanency options of guardianship and adoption, including
6 the long-term benefits and consequences of each option, prior to
7 establishing legal guardianship or pursuing adoption.

8 (h) If, at any hearing held pursuant to Section 366.26, a
9 guardianship is established for the minor with an approved relative
10 caregiver and juvenile court dependency is subsequently dismissed,
11 the minor shall be eligible for aid under the Kin-GAP Program as
12 provided for in Article 4.5 (commencing with Section 11360) or
13 Article 4.7 (commencing with Section 11385) of Chapter 2, as
14 applicable.

15 (i) In determining whether reunification services will benefit
16 the child pursuant to paragraph (6) or (7) of subdivision (b), the
17 court shall consider any information it deems relevant, including
18 the following factors:

19 (1) The specific act or omission comprising the severe sexual
20 abuse or the severe physical harm inflicted on the child or the
21 child's sibling or half sibling, or another child.

22 (2) The circumstances under which the abuse or harm was
23 inflicted on the child or the child's sibling or half sibling, or another
24 child.

25 (3) The severity of the emotional trauma suffered by the child
26 or the child's sibling or half sibling, or another sibling.

27 (4) Any history of abuse of other children by the offending
28 parent or guardian.

29 (5) The likelihood that the child may be safely returned to the
30 care of the offending parent or guardian within 12 months with no
31 continuing supervision.

32 (6) Whether or not the child desires to be reunified with the
33 offending parent or guardian.

34 (j) When the court determines that reunification services will
35 not be ordered, it shall order that the child's caregiver receive the
36 child's birth certificate in accordance with Sections 16010.4 and
37 16010.5. Additionally, when the court determines that reunification
38 services will not be ordered, it shall order, when appropriate, that
39 a child who is 16 years of age or older receive his or her birth
40 certificate.

1 ~~(k) The court shall read into the record the basis for a finding~~
2 ~~of severe sexual abuse or the infliction of severe physical harm~~
3 ~~under paragraph (6) of subdivision (b), and shall also specify the~~
4 ~~factual findings used to determine that the provision of~~
5 ~~reunification services to the offending parent or guardian would~~
6 ~~not benefit the child.~~

7 ~~(l) This section shall remain in effect only until January 1, 2014,~~
8 ~~and as of that date is repealed, unless a later enacted statute, that~~
9 ~~is enacted before January 1, 2014, deletes or extends that date.~~

10 ~~SEC. 2. Section 361.5 of the Welfare and Institutions Code,~~
11 ~~as amended by Section 14 of Chapter 559 of the Statutes of 2010,~~
12 ~~is amended to read:~~

13 ~~361.5. (a) Except as provided in subdivision (b), or when the~~
14 ~~parent has voluntarily relinquished the child and the relinquishment~~
15 ~~has been filed with the State Department of Social Services, or~~
16 ~~upon the establishment of an order of guardianship pursuant to~~
17 ~~Section 360, whenever a child is removed from a parent's or~~
18 ~~guardian's custody, the juvenile court shall order the social worker~~
19 ~~to provide child welfare services to the child and the child's mother~~
20 ~~and statutorily presumed father or guardians. Upon a finding and~~
21 ~~declaration of paternity by the juvenile court or proof of a prior~~
22 ~~declaration of paternity by any court of competent jurisdiction, the~~
23 ~~juvenile court may order services for the child and the biological~~
24 ~~father, if the court determines that the services will benefit the~~
25 ~~child.~~

26 ~~(1) Family reunification services, when provided, shall be~~
27 ~~provided as follows:~~

28 ~~(A) Except as otherwise provided in subparagraph (C), for a~~
29 ~~child who, on the date of initial removal from the physical custody~~
30 ~~of his or her parent or guardian, was three years of age or older,~~
31 ~~court-ordered services shall be provided beginning with the~~
32 ~~dispositional hearing and ending 12 months after the date the child~~
33 ~~entered foster care as defined in Section 361.49, unless the child~~
34 ~~is returned to the home of the parent or guardian.~~

35 ~~(B) For a child who, on the date of initial removal from the~~
36 ~~physical custody of his or her parent or guardian, was under three~~
37 ~~years of age, court-ordered services shall be provided for a period~~
38 ~~of six months from the dispositional hearing as provided in~~
39 ~~subdivision (c) of Section 366.21, but no longer than 12 months~~
40 ~~from the date the child entered foster care as defined in Section~~

1 ~~361.49 unless the child is returned to the home of the parent or~~
2 ~~guardian.~~

3 ~~(C) For the purpose of placing and maintaining a sibling group~~
4 ~~together in a permanent home should reunification efforts fail, for~~
5 ~~a child in a sibling group whose members were removed from~~
6 ~~parental custody at the same time, and in which one member of~~
7 ~~the sibling group was under three years of age on the date of initial~~
8 ~~removal from the physical custody of his or her parent or guardian,~~
9 ~~court-ordered services for some or all of the sibling group may be~~
10 ~~limited as set forth in subparagraph (B). For the purposes of this~~
11 ~~paragraph, “a sibling group” shall mean two or more children who~~
12 ~~are related to each other as full or half siblings.~~

13 ~~(2) Any motion to terminate court-ordered reunification services~~
14 ~~prior to the hearing set pursuant to subdivision (f) of Section 366.21~~
15 ~~for a child described by subparagraph (A) of paragraph (1), or~~
16 ~~prior to the hearing set pursuant to subdivision (e) of Section~~
17 ~~366.21 for a child described by subparagraph (B) or (C) of~~
18 ~~paragraph (1), shall be made pursuant to the requirements set forth~~
19 ~~in subdivision (e) of Section 388. A motion to terminate~~
20 ~~court-ordered reunification services shall not be required at the~~
21 ~~hearing set pursuant to subdivision (e) of Section 366.21 if the~~
22 ~~court finds by clear and convincing evidence one of the following:~~

23 ~~(A) That the child was removed initially under subdivision (g)~~
24 ~~of Section 300 and the whereabouts of the parent are still unknown.~~

25 ~~(B) That the parent has failed to contact and visit the child.~~

26 ~~(C) That the parent has been convicted of a felony indicating~~
27 ~~parental unfitness.~~

28 ~~(3) Notwithstanding subparagraphs (A), (B), and (C) of~~
29 ~~paragraph (1), court-ordered services may be extended up to a~~
30 ~~maximum time period not to exceed 18 months after the date the~~
31 ~~child was originally removed from physical custody of his or her~~
32 ~~parent or guardian if it can be shown, at the hearing held pursuant~~
33 ~~to subdivision (f) of Section 366.21, that the permanent plan for~~
34 ~~the child is that he or she will be returned and safely maintained~~
35 ~~in the home within the extended time period. The court shall extend~~
36 ~~the time period only if it finds that there is a substantial probability~~
37 ~~that the child will be returned to the physical custody of his or her~~
38 ~~parent or guardian within the extended time period or that~~
39 ~~reasonable services have not been provided to the parent or~~
40 ~~guardian. In determining whether court-ordered services may be~~

1 extended, the court shall consider the special circumstances of an
2 incarcerated or institutionalized parent or parents, or parent or
3 parents court-ordered to a residential substance abuse treatment
4 program, including, but not limited to, barriers to the parent's or
5 guardian's access to services and ability to maintain contact with
6 his or her child. The court shall also consider, among other factors,
7 good faith efforts that the parent or guardian has made to maintain
8 contact with the child. If the court extends the time period, the
9 court shall specify the factual basis for its conclusion that there is
10 a substantial probability that the child will be returned to the
11 physical custody of his or her parent or guardian within the
12 extended time period. The court also shall make findings pursuant
13 to subdivision (a) of Section 366 and subdivision (c) of Section
14 358.1.

15 When counseling or other treatment services are ordered, the
16 parent or guardian shall be ordered to participate in those services,
17 unless the parent's or guardian's participation is deemed by the
18 court to be inappropriate or potentially detrimental to the child, or
19 unless a parent or guardian is incarcerated and the corrections
20 facility in which he or she is incarcerated does not provide access
21 to the treatment services ordered by the court. Physical custody of
22 the child by the parents or guardians during the applicable time
23 period under subparagraph (A), (B), or (C) of paragraph (1) shall
24 not serve to interrupt the running of the period. If at the end of the
25 applicable time period, a child cannot be safely returned to the
26 care and custody of a parent or guardian without court supervision,
27 but the child clearly desires contact with the parent or guardian,
28 the court shall take the child's desire into account in devising a
29 permanency plan.

30 In cases where the child was under three years of age on the date
31 of the initial removal from the physical custody of his or her parent
32 or guardian or is a member of a sibling group as described in
33 subparagraph (C) of paragraph (1), the court shall inform the parent
34 or guardian that the failure of the parent or guardian to participate
35 regularly in any court-ordered treatment programs or to cooperate
36 or avail himself or herself of services provided as part of the child
37 welfare services case plan may result in a termination of efforts
38 to reunify the family after six months. The court shall inform the
39 parent or guardian of the factors used in subdivision (c) of Section
40 366.21 to determine whether to limit services to six months for

1 ~~some or all members of a sibling group as described in~~
2 ~~subparagraph (C) of paragraph (1).~~

3 ~~(4) Notwithstanding paragraph (3), court-ordered services may~~
4 ~~be extended up to a maximum time period not to exceed 24 months~~
5 ~~after the date the child was originally removed from physical~~
6 ~~custody of his or her parent or guardian if it is shown, at the hearing~~
7 ~~held pursuant to subdivision (b) of Section 366.22, that the~~
8 ~~permanent plan for the child is that he or she will be returned and~~
9 ~~safely maintained in the home within the extended time period.~~
10 ~~The court shall extend the time period only if it finds that it is in~~
11 ~~the child's best interest to have the time period extended and that~~
12 ~~there is a substantial probability that the child will be returned to~~
13 ~~the physical custody of his or her parent or guardian who is~~
14 ~~described in subdivision (b) of Section 366.22 within the extended~~
15 ~~time period, or that reasonable services have not been provided to~~
16 ~~the parent or guardian. If the court extends the time period, the~~
17 ~~court shall specify the factual basis for its conclusion that there is~~
18 ~~a substantial probability that the child will be returned to the~~
19 ~~physical custody of his or her parent or guardian within the~~
20 ~~extended time period. The court also shall make findings pursuant~~
21 ~~to subdivision (a) of Section 366 and subdivision (c) of Section~~
22 ~~358.1.~~

23 ~~When counseling or other treatment services are ordered, the~~
24 ~~parent or guardian shall be ordered to participate in those services,~~
25 ~~in order for substantial probability to be found. Physical custody~~
26 ~~of the child by the parents or guardians during the applicable time~~
27 ~~period under subparagraph (A), (B), or (C) of paragraph (1) shall~~
28 ~~not serve to interrupt the running of the period. If at the end of the~~
29 ~~applicable time period, the child cannot be safely returned to the~~
30 ~~care and custody of a parent or guardian without court supervision,~~
31 ~~but the child clearly desires contact with the parent or guardian,~~
32 ~~the court shall take the child's desire into account in devising a~~
33 ~~permanency plan.~~

34 ~~Except in cases where, pursuant to subdivision (b), the court~~
35 ~~does not order reunification services, the court shall inform the~~
36 ~~parent or parents of Section 366.26 and shall specify that the~~
37 ~~parent's or parents' parental rights may be terminated.~~

38 ~~(b) Reunification services need not be provided to a parent or~~
39 ~~guardian described in this subdivision when the court finds, by~~
40 ~~clear and convincing evidence, any of the following:~~

1 ~~(1) That the whereabouts of the parent or guardian is unknown.~~
2 ~~A finding pursuant to this paragraph shall be supported by an~~
3 ~~affidavit or by proof that a reasonably diligent search has failed~~
4 ~~to locate the parent or guardian. The posting or publication of~~
5 ~~notices is not required in that search.~~

6 ~~(2) That the parent or guardian is suffering from a mental~~
7 ~~disability that is described in Chapter 2 (commencing with Section~~
8 ~~7820) of Part 4 of Division 12 of the Family Code and that renders~~
9 ~~him or her incapable of utilizing those services.~~

10 ~~(3) That the child or a sibling of the child has been previously~~
11 ~~adjudicated a dependent pursuant to any subdivision of Section~~
12 ~~300 as a result of physical or sexual abuse, that following that~~
13 ~~adjudication the child had been removed from the custody of his~~
14 ~~or her parent or guardian pursuant to Section 361, that the child~~
15 ~~has been returned to the custody of the parent or guardian from~~
16 ~~whom the child had been taken originally, and that the child is~~
17 ~~being removed pursuant to Section 361, due to additional physical~~
18 ~~or sexual abuse.~~

19 ~~(4) That the parent or guardian of the child has caused the death~~
20 ~~of another child through abuse or neglect.~~

21 ~~(5) That the child was brought within the jurisdiction of the~~
22 ~~court under subdivision (e) of Section 300 because of the conduct~~
23 ~~of that parent or guardian.~~

24 ~~(6) That the child has been adjudicated a dependent pursuant~~
25 ~~to any subdivision of Section 300 as a result of severe sexual abuse~~
26 ~~or the infliction of severe physical harm to a child by a parent or~~
27 ~~guardian as defined in this subdivision, and the court makes a~~
28 ~~factual finding that it would not benefit the child to pursue~~
29 ~~reunification services with the offending parent or guardian.~~

30 ~~A finding of severe sexual abuse, for the purposes of this~~
31 ~~subdivision, may be based on, but is not limited to, sexual~~
32 ~~intercourse, or stimulation involving genital-genital, oral-genital,~~
33 ~~anal-genital, or oral-anal contact, whether between the parent or~~
34 ~~guardian and a child, or between a child and another person or~~
35 ~~animal with the actual or implied consent of the parent or guardian;~~
36 ~~or the penetration or manipulation of a child's genital organs or~~
37 ~~rectum by any animate or inanimate object for the sexual~~
38 ~~gratification of the parent or guardian, or for the sexual gratification~~
39 ~~of another person with the actual or implied consent of the parent~~
40 ~~or guardian.~~

~~A finding of the infliction of severe physical harm, for the purposes of this subdivision, may be based on, but is not limited to, deliberate and serious injury inflicted to or on a child's body by an act or omission of the parent or guardian, or of another individual or animal with the consent of the parent or guardian; deliberate and torturous confinement of a child in a closed space; or any other torturous act or omission that would be reasonably understood to cause serious emotional damage.~~

~~(7) That the parent is not receiving reunification services for a sibling or a half sibling of the child pursuant to paragraph (3), (5), or (6).~~

~~(8) That the child was conceived by means of the commission of an offense listed in Section 288 or 288.5 of the Penal Code, or by an act committed outside of this state that, if committed in this state, would constitute one of those offenses. This paragraph only applies to the parent who committed the offense or act.~~

~~(9) That the child has been found to be a child described in subdivision (g) of Section 300, that the parent or guardian of the child willfully abandoned the child, and the court finds that the abandonment itself constituted a serious danger to the child; or that the parent or other person having custody of the child voluntarily surrendered physical custody of the child pursuant to Section 1255.7 of the Health and Safety Code. For the purposes of this paragraph, "serious danger" means that without the intervention of another person or agency, the child would have sustained severe or permanent disability, injury, illness, or death. For purposes of this paragraph, "willful abandonment" shall not be construed as actions taken in good faith by the parent without the intent of placing the child in serious danger.~~

~~(10) That the court ordered termination of reunification services for any siblings or half siblings of the child because the parent or guardian failed to reunify with the sibling or half sibling after the sibling or half sibling had been removed from that parent or guardian pursuant to Section 361 and that parent or guardian is the same parent or guardian described in subdivision (a) and that, according to the findings of the court, this parent or guardian has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from that parent or guardian.~~

1 ~~(11) That the parental rights of a parent over any sibling or half~~
2 ~~sibling of the child had been permanently severed, and this parent~~
3 ~~is the same parent described in subdivision (a), and that, according~~
4 ~~to the findings of the court, this parent has not subsequently made~~
5 ~~a reasonable effort to treat the problems that led to removal of the~~
6 ~~sibling or half sibling of that child from the parent.~~

7 ~~(12) That the parent or guardian of the child has been convicted~~
8 ~~of a violent felony, as defined in subdivision (c) of Section 667.5~~
9 ~~of the Penal Code.~~

10 ~~(13) That the parent or guardian of the child has a history of~~
11 ~~extensive, abusive, and chronic use of drugs or alcohol and has~~
12 ~~resisted prior court-ordered treatment for this problem during a~~
13 ~~three-year period immediately prior to the filing of the petition~~
14 ~~that brought that child to the court's attention, or has failed or~~
15 ~~refused to comply with a program of drug or alcohol treatment~~
16 ~~described in the case plan required by Section 358.1 on at least~~
17 ~~two prior occasions, even though the programs identified were~~
18 ~~available and accessible.~~

19 ~~(14) That the parent or guardian of the child has advised the~~
20 ~~court that he or she is not interested in receiving family~~
21 ~~maintenance or family reunification services or having the child~~
22 ~~returned to or placed in his or her custody and does not wish to~~
23 ~~receive family maintenance or reunification services.~~

24 ~~The parent or guardian shall be represented by counsel and shall~~
25 ~~execute a waiver of services form to be adopted by the Judicial~~
26 ~~Council. The court shall advise the parent or guardian of any right~~
27 ~~to services and of the possible consequences of a waiver of~~
28 ~~services, including the termination of parental rights and placement~~
29 ~~of the child for adoption. The court shall not accept the waiver of~~
30 ~~services unless it states on the record its finding that the parent or~~
31 ~~guardian has knowingly and intelligently waived the right to~~
32 ~~services.~~

33 ~~(15) That the parent or guardian has on one or more occasions~~
34 ~~willfully abducted the child or child's sibling or half sibling from~~
35 ~~his or her placement and refused to disclose the child's or child's~~
36 ~~sibling's or half sibling's whereabouts, refused to return physical~~
37 ~~custody of the child or child's sibling or half sibling to his or her~~
38 ~~placement, or refused to return physical custody of the child or~~
39 ~~child's sibling or half sibling to the social worker.~~

~~(e) In deciding whether to order reunification in any case in which this section applies, the court shall hold a dispositional hearing. The social worker shall prepare a report that discusses whether reunification services shall be provided. When it is alleged, pursuant to paragraph (2) of subdivision (b), that the parent is incapable of utilizing services due to mental disability, the court shall order reunification services unless competent evidence from mental health professionals establishes that, even with the provision of services, the parent is unlikely to be capable of adequately caring for the child within the time limits specified in subdivision (a).~~

~~The court shall not order reunification for a parent or guardian described in paragraph (3), (4), (6), (7), (8), (9), (10), (11), (12), (13), (14), or (15) of subdivision (b) unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the child.~~

~~In addition, the court shall not order reunification in any situation described in paragraph (5) of subdivision (b) unless it finds that, based on competent testimony, those services are likely to prevent reabuse or continued neglect of the child or that failure to try reunification will be detrimental to the child because the child is closely and positively attached to that parent. The social worker shall investigate the circumstances leading to the removal of the child and advise the court whether there are circumstances that indicate that reunification is likely to be successful or unsuccessful and whether failure to order reunification is likely to be detrimental to the child.~~

~~The failure of the parent to respond to previous services, the fact that the child was abused while the parent was under the influence of drugs or alcohol, a past history of violent behavior, or testimony by a competent professional that the parent's behavior is unlikely to be changed by services are among the factors indicating that reunification services are unlikely to be successful. The fact that a parent or guardian is no longer living with an individual who severely abused the child may be considered in deciding that reunification services are likely to be successful, provided that the court shall consider any pattern of behavior on the part of the parent that has exposed the child to repeated abuse.~~

~~(d) If reunification services are not ordered pursuant to paragraph (1) of subdivision (b) and the whereabouts of a parent become known within six months of the out-of-home placement~~

1 of the child, the court shall order the social worker to provide
2 family reunification services in accordance with this subdivision.

3 (e) (1) If the parent or guardian is incarcerated or
4 institutionalized, the court shall order reasonable services unless
5 the court determines, by clear and convincing evidence, those
6 services would be detrimental to the child. In determining
7 detriment, the court shall consider the age of the child, the degree
8 of parent-child bonding, the length of the sentence, the length and
9 nature of the treatment, the nature of the crime or illness, the degree
10 of detriment to the child if services are not offered and, for children
11 10 years of age or older, the child's attitude toward the
12 implementation of family reunification services, the likelihood of
13 the parent's discharge from incarceration or institutionalization
14 within the reunification time limitations described in subdivision
15 (a), and any other appropriate factors. In determining the content
16 of reasonable services, the court shall consider the particular
17 barriers to an incarcerated or otherwise institutionalized parent's
18 access to those court-mandated services and ability to maintain
19 contact with his or her child, and shall document this information
20 in the child's case plan. Reunification services are subject to the
21 applicable time limitations imposed in subdivision (a). Services
22 may include, but shall not be limited to, all of the following:

23 (A) Maintaining contact between the parent and child through
24 collect telephone calls.

25 (B) Transportation services, where appropriate.

26 (C) Visitation services, where appropriate.

27 (D) Reasonable services to extended family members or foster
28 parents providing care for the child if the services are not
29 detrimental to the child.

30 An incarcerated parent may be required to attend counseling,
31 parenting classes, or vocational training programs as part of the
32 reunification service plan if actual access to these services is
33 provided. The social worker shall document in the child's case
34 plan the particular barriers to an incarcerated or institutionalized
35 parent's access to those court-mandated services and ability to
36 maintain contact with his or her child.

37 (2) The presiding judge of the juvenile court of each county
38 may convene representatives of the county welfare department,
39 the sheriff's department, and other appropriate entities for the
40 purpose of developing and entering into protocols for ensuring the

1 notification, transportation, and presence of an incarcerated or
2 institutionalized parent at all court hearings involving proceedings
3 affecting the child pursuant to Section 2625 of the Penal Code.
4 The county welfare department shall utilize the prisoner locator
5 system developed by the Department of Corrections and
6 Rehabilitation to facilitate timely and effective notice of hearings
7 for incarcerated parents.

8 (3) Notwithstanding any other provision of law, if the
9 incarcerated parent is a woman seeking to participate in the
10 community treatment program operated by the Department of
11 Corrections and Rehabilitation pursuant to Chapter 4.8
12 (commencing with Section 1174) of Title 7 of Part 2 of, Chapter
13 4 (commencing with Section 3410) of Title 2 of Part 3 of, the Penal
14 Code, the court shall determine whether the parent's participation
15 in a program is in the child's best interest and whether it is suitable
16 to meet the needs of the parent and child.

17 (f) If the court, pursuant to paragraph (2), (3), (4), (5), (6), (7),
18 (8), (9), (10), (11), (12), (13), (14), or (15) of subdivision (b) or
19 paragraph (1) of subdivision (c), does not order reunification
20 services, it shall, at the dispositional hearing, that shall include a
21 permanency hearing, determine if a hearing under Section 366.26
22 shall be set in order to determine whether adoption, guardianship,
23 or long-term foster care is the most appropriate plan for the child,
24 and shall consider in-state and out-of-state placement options. If
25 the court so determines, it shall conduct the hearing pursuant to
26 Section 366.26 within 120 days after the dispositional hearing.
27 However, the court shall not schedule a hearing so long as the
28 other parent is being provided reunification services pursuant to
29 subdivision (a). The court may continue to permit the parent to
30 visit the child unless it finds that visitation would be detrimental
31 to the child.

32 (g) (1) Whenever a court orders that a hearing shall be held
33 pursuant to Section 366.26, it shall direct the agency supervising
34 the child and the licensed county adoption agency, or the State
35 Department of Social Services when it is acting as an adoption
36 agency in counties that are not served by a county adoption agency,
37 to prepare an assessment that shall include:

38 (A) Current search efforts for an absent parent or parents and
39 notification of a noncustodial parent in the manner provided for
40 in Section 291.

1 ~~(B) A review of the amount of and nature of any contact between~~
2 ~~the child and his or her parents and other members of his or her~~
3 ~~extended family since the time of placement. Although the~~
4 ~~extended family of each child shall be reviewed on a case-by-case~~
5 ~~basis, “extended family” for the purpose of this subparagraph shall~~
6 ~~include, but not be limited to, the child’s siblings, grandparents,~~
7 ~~aunts, and uncles.~~

8 ~~(C) An evaluation of the child’s medical, developmental,~~
9 ~~scholastic, mental, and emotional status.~~

10 ~~(D) A preliminary assessment of the eligibility and commitment~~
11 ~~of any identified prospective adoptive parent or guardian,~~
12 ~~particularly the caretaker, to include a social history, including~~
13 ~~screening for criminal records and prior referrals for child abuse~~
14 ~~or neglect, the capability to meet the child’s needs, and the~~
15 ~~understanding of the legal and financial rights and responsibilities~~
16 ~~of adoption and guardianship. If a proposed guardian is a relative~~
17 ~~of the minor, the assessment shall also consider, but need not be~~
18 ~~limited to, all of the factors specified in subdivision (a) of Section~~
19 ~~361.3 and in Section 361.4. As used in this subparagraph, “relative”~~
20 ~~means an adult who is related to the minor by blood, adoption, or~~
21 ~~affinity within the fifth degree of kinship, including stepparents,~~
22 ~~stepsiblings, and all relatives whose status is preceded by the words~~
23 ~~“great,” “great-great,” or “grand,” or the spouse of any of those~~
24 ~~persons even if the marriage was terminated by death or~~
25 ~~dissolution.~~

26 ~~(E) The relationship of the child to any identified prospective~~
27 ~~adoptive parent or guardian, the duration and character of the~~
28 ~~relationship, the degree of attachment of the child to the prospective~~
29 ~~relative guardian or adoptive parent, the relative’s or adoptive~~
30 ~~parent’s strong commitment to caring permanently for the child,~~
31 ~~the motivation for seeking adoption or guardianship, a statement~~
32 ~~from the child concerning placement and the adoption or~~
33 ~~guardianship, and whether the child over 12 years of age has been~~
34 ~~consulted about the proposed relative guardianship arrangements~~
35 ~~unless the child’s age or physical, emotional, or other condition~~
36 ~~precludes his or her meaningful response, and if so, a description~~
37 ~~of the condition.~~

38 ~~(F) An analysis of the likelihood that the child will be adopted~~
39 ~~if parental rights are terminated.~~

~~(2) (A) A relative caregiver's preference for legal guardianship over adoption, if it is due to circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, shall not constitute the sole basis for recommending removal of the child from the relative caregiver for purposes of adoptive placement.~~

~~(B) A relative caregiver shall be given information regarding the permanency options of guardianship and adoption, including the long-term benefits and consequences of each option, prior to establishing legal guardianship or pursuing adoption.~~

~~(h) If, at any hearing held pursuant to Section 366.26, a guardianship is established for the minor with an approved relative caregiver and juvenile court dependency is subsequently dismissed, the minor shall be eligible for aid under the Kin-GAP Program as provided for in Article 4.5 (commencing with Section 11360) or Article 4.7 (commencing with Section 11385) of Chapter 2, as applicable.~~

~~(i) In determining whether reunification services will benefit the child pursuant to paragraph (6) or (7) of subdivision (b), the court shall consider any information it deems relevant, including the following factors:~~

~~(1) The specific act or omission comprising the severe sexual abuse or the severe physical harm inflicted on the child or the child's sibling or half sibling, or another child.~~

~~(2) The circumstances under which the abuse or harm was inflicted on the child or the child's sibling or half sibling, or another child.~~

~~(3) The severity of the emotional trauma suffered by the child or the child's sibling or half sibling, or another child.~~

~~(4) Any history of abuse of other children by the offending parent or guardian.~~

~~(5) The likelihood that the child may be safely returned to the care of the offending parent or guardian within 12 months with no continuing supervision.~~

~~(6) Whether or not the child desires to be reunified with the offending parent or guardian.~~

~~(j) The court shall read into the record the basis for a finding of severe sexual abuse or the infliction of severe physical harm under paragraph (6) of subdivision (b), and shall also specify the factual findings used to determine that the provision of reunification~~

1 ~~services to the offending parent or guardian would not benefit the~~
2 ~~child.~~

3 ~~(k) This section shall become operative on January 1, 2014.~~

4 ~~SEC. 3.~~

5 *SECTION 1.* Section 388 of the Welfare and Institutions Code
6 is amended to read:

7 388. (a) (1) Any parent or other person having an interest in
8 a child who is a dependent child of the juvenile court or the child
9 himself or herself through a properly appointed guardian may,
10 upon grounds of change of circumstance or new evidence, petition
11 the court in the same action in which the child was found to be a
12 dependent child of the juvenile court or in which a guardianship
13 was ordered pursuant to Section 360 for a hearing to change,
14 modify, or set aside any order of court previously made or to
15 terminate the jurisdiction of the court. The petition shall be verified
16 and, if made by a person other than the child, shall state the
17 petitioner's relationship to or interest in the child and shall set forth
18 in concise language any change of circumstance or new evidence
19 that is alleged to require the change of order or termination of
20 jurisdiction.

21 (2) When any party, including a child who is a dependent of the
22 juvenile court, petitions the court, prior to the hearing set pursuant
23 to Section 366.26 or prior to an order terminating parental rights,
24 to modify the order that reunification services were not needed
25 pursuant to paragraphs (4), (5), and (6) of subdivision (b) of Section
26 361.5, or to modify any orders related to custody or visitation of
27 ~~the child, the court shall order a hearing on the petition only if the~~
28 ~~court finds by a preponderance of the evidence that the best~~
29 ~~interests of the child will be met by the proposed change or order.~~
30 ~~At that hearing, the subject child, and the court orders a hearing~~
31 *pursuant to subdivision (d), the court shall modify the order that*
32 *reunification services were not needed pursuant to paragraphs (4),*
33 *(5), and (6) of subdivision (b) of Section 361.5, or any orders*
34 *related to the custody or visitation of the child for whom*
35 *reunification services were not ordered pursuant to paragraphs*
36 *(4), (5), and (6) of subdivision (b) of Section 361.5, only if the*
37 *court finds by clear and convincing evidence that the proposed*
38 *change is in the best interests of the child.*

39 (b) Any person, including a child who is a dependent of the
40 juvenile court, may petition the court to assert a relationship as a

1 sibling related by blood, adoption, or affinity through a common
2 legal or biological parent to a child who is, or is the subject of a
3 petition for adjudication as, a dependent of the juvenile court, and
4 may request visitation with the dependent child, placement with
5 or near the dependent child, or consideration when determining
6 or implementing a case plan or permanent plan for the dependent
7 child or make any other request for an order which may be shown
8 to be in the best interest of the dependent child. The court may
9 appoint a guardian ad litem to file the petition for the dependent
10 child asserting the sibling relationship if the court determines that
11 the appointment is necessary for the best interests of the dependent
12 child. The petition shall be verified and shall set forth the
13 following:

14 (1) Through which parent he or she is related to the dependent
15 child.

16 (2) Whether he or she is related to the dependent child by blood,
17 adoption, or affinity.

18 (3) The request or order that the petitioner is seeking.

19 (4) Why that request or order is in the best interest of the
20 dependent child.

21 (c) (1) Any party, including a child who is a dependent of the
22 juvenile court, may petition the court, prior to the hearing set
23 pursuant to subdivision (f) of Section 366.21 for a child described
24 by subparagraph (A) of paragraph (1) of subdivision (a) of Section
25 361.5, or prior to the hearing set pursuant to subdivision (e) of
26 Section 366.21 for a child described by subparagraph (B) or (C)
27 of paragraph (1) of subdivision (a) of Section 361.5, to terminate
28 court-ordered reunification services provided under subdivision
29 (a) of Section 361.5 only if one of the following conditions exists:

30 (A) It appears that a change of circumstance or new evidence
31 exists that satisfies a condition set forth in subdivision (b) or (e)
32 of Section 361.5 justifying termination of court-ordered
33 reunification services.

34 (B) The action or inaction of the parent or guardian creates a
35 substantial likelihood that reunification will not occur, including,
36 but not limited to, the parent or guardian's failure to visit the child,
37 or the failure of the parent or guardian to participate regularly and
38 make substantive progress in a court-ordered treatment plan.

39 (2) In determining whether the parent or guardian has failed to
40 visit the child or participate regularly or make progress in the

1 treatment plan, the court shall consider factors including, but not
2 limited to, the parent or guardian's incarceration,
3 institutionalization, or participation in a court-ordered residential
4 substance abuse treatment program.

5 (3) The court shall terminate reunification services during the
6 above-described time periods only upon a finding by a
7 preponderance of evidence that reasonable services have been
8 offered or provided, and upon a finding of clear and convincing
9 evidence that one of the conditions in subparagraph (A) or (B) of
10 paragraph (1) exists.

11 (4) If the court terminates reunification services, it shall order
12 that a hearing pursuant to Section 366.26 be held within 120 days.

13 (d) If it appears that the best interests of the child may be
14 promoted by the proposed change of order, *modification of*
15 *reunification services, custody, or visitation orders concerning a*
16 *child for whom reunification services were not ordered pursuant*
17 *to paragraphs (4), (5), and (6) of subdivision (b) of Section 361.5,*
18 recognition of a sibling relationship, termination of jurisdiction,
19 or clear and convincing evidence supports revocation or termination
20 of court-ordered reunification services, the court shall order that
21 a hearing be held and shall give prior notice, or cause prior notice
22 to be given, to the persons and by the means prescribed by Section
23 386, and, in those instances in which the means of giving notice
24 is not prescribed by those sections, then by means the court
25 prescribes.

26 (e) (1) On and after January 1, 2012, a nonminor who attained
27 18 years of age while subject to an order for foster care placement
28 and, commencing January 1, 2012, who has not attained 19 years
29 of age, or, commencing January 1, 2013, 20 years of age, or,
30 commencing January 1, 2014, 21 years of age, for whom the court
31 has dismissed dependency jurisdiction pursuant to Section 391, or
32 delinquency jurisdiction pursuant to Section 607.2 or transition
33 jurisdiction pursuant to Section 452, but has retained general
34 jurisdiction under subdivision (b) of Section 303, or the county
35 child welfare services, probation department, or tribal placing
36 agency on behalf of the nonminor, may petition the court in the
37 same action in which the child was found to be a dependent or
38 delinquent child of the juvenile court, for a hearing to resume the
39 dependency jurisdiction over a former dependent or to assume or
40 resume transition jurisdiction over a former delinquent ward

1 pursuant to Section 450. The petition shall be filed within the
2 period that the nonminor is of the age described in this paragraph.
3 If the nonminor has completed the voluntary reentry agreement,
4 as described in subdivision (z) of Section 11400, with the placing
5 agency, the agency shall file the petition on behalf of the nonminor
6 within 15 judicial days of the date the agreement was signed unless
7 the nonminor elects to file the petition at an earlier date.

8 (2) (A) The petition to resume jurisdiction may be filed in the
9 juvenile court that retains general jurisdiction under subdivision
10 (b) of Section 303, or the petition may be submitted to the juvenile
11 court in the county where the youth resides and forwarded to the
12 juvenile court that retained general jurisdiction and filed with that
13 court. The juvenile court having general jurisdiction under Section
14 303 shall receive the petition from the court where the petition
15 was submitted within five court days of its submission, if the
16 petition is filed in the county of residence. The juvenile court that
17 retained general jurisdiction shall order that a hearing be held
18 within 15 judicial days of the date the petition was filed if there is
19 a prima facie showing that the nonminor satisfies the following
20 criteria:

21 (i) He or she was previously under juvenile court jurisdiction,
22 subject to an order for foster care placement when he or she
23 attained 18 years of age, and has not attained the age limits
24 described in paragraph (1).

25 (ii) He or she intends to satisfy at least one of the conditions set
26 forth in paragraphs (1) to (5), inclusive, of subdivision (b) of
27 Section 11403.

28 (iii) He or she wants assistance either in maintaining or securing
29 appropriate supervised placement, or is in need of immediate
30 placement and agrees to supervised placement pursuant to the
31 voluntary reentry agreement as described in subdivision (z) of
32 Section 11400.

33 (B) Upon ordering a hearing, the court shall give prior notice,
34 or cause prior notice to be given, to the persons and by the means
35 prescribed by Section 386, except that notice to parents or former
36 guardians shall not be provided unless the nonminor requests, in
37 writing on the face of the petition, notice to the parents or former
38 guardians.

39 (3) The Judicial Council, by January 1, 2012, shall adopt rules
40 of court to allow for telephonic appearances by nonminor former

1 dependents or delinquents in these proceedings, and for telephonic
2 appearances by nonminor dependents in any proceeding in which
3 the nonminor dependent is a party, and he or she declines to appear
4 and elects a telephonic appearance.

5 (4) Prior to the hearing on a petition to resume dependency
6 jurisdiction or to assume or resume transition jurisdiction, the court
7 shall order the county child welfare or probation department or
8 Indian tribe that has entered into an agreement pursuant to Section
9 10553.1 to prepare a report for the court addressing whether the
10 nonminor intends to satisfy at least one of the criteria set forth in
11 subdivision (b) of Section 11403. When the recommendation is
12 for the nonminor dependent to be placed in a setting where minor
13 dependents also reside, the results of a background check of the
14 petitioning nonminor conducted pursuant to Section 16504.5, used
15 by the placing agency to determine appropriate placement options
16 for the nonminor. The existence of a criminal conviction is not a
17 bar to eligibility for reentry or resumption of dependency
18 jurisdiction or the assumption or resumption of transition
19 jurisdiction over a nonminor.

20 (5) (A) The court shall resume dependency jurisdiction over a
21 former dependent or assume or resume transition jurisdiction over
22 a former delinquent ward pursuant to Section 450, and order that
23 the nonminor's placement and care be under the responsibility of
24 the county child welfare services department, the probation
25 department, or tribe, if the court finds all of the following:

26 (i) The nonminor was previously under juvenile court
27 jurisdiction subject to an order for foster care placement when he
28 or she attained 18 years of age.

29 (ii) The nonminor has not attained the age limits described in
30 paragraph (1).

31 (iii) Reentry and remaining in foster care are in the nonminor's
32 best interests.

33 (iv) The nonminor intends to satisfy, and agrees to satisfy, at
34 least one of the criteria set forth in paragraphs (1) to (5), inclusive,
35 of subdivision (b) of Section 11403, or demonstrates his or her
36 agreement to satisfy the criteria by signing the voluntary reentry
37 agreement as described in subdivision (z) of Section 11400.

38 (B) The agency made responsible for the nonminor's placement
39 and care pursuant to subparagraph (A) shall prepare a new
40 transitional independent living case plan and submit it to the court

1 within 60 days of the resumption of dependency jurisdiction or
2 assumption or resumption of transition jurisdiction.

3 (C) In no event shall the court grant a continuance that would
4 cause the hearing to resume dependency jurisdiction or to assume
5 or resume transition jurisdiction to be completed more than 120
6 days after the date the petition was submitted.

7 *SEC. 2. This act is an urgency statute necessary for the*
8 *immediate preservation of the public peace, health, or safety within*
9 *the meaning of Article IV of the Constitution and shall go into*
10 *immediate effect. The facts constituting the necessity are:*

11 *In order to ensure that parents of children who are in dependency*
12 *proceedings due to a parent's sexual abuse or severe physical*
13 *harm to that child or siblings of that child are only given*
14 *reunification services in modification proceedings in limited*
15 *circumstances, it is necessary for this act to take effect immediately.*